THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.22084 OF 2001

Dated: 2nd November, 2005.

Between:

Banoth Rangamma .. Petitioner

And

1. Agent to the Government, Khammam.
2. Spl. Dy. Collector (TW), Palvoncha, Khammam Dist.
3. Mandal Revenue Officer, Kothagudem, Khammam Dist.
4. Maloth Venkataram, S/o. Hemla, 39 years, R/o.Gudithanda, Saravaram, Kothagudem Mandal,

Khammam District. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.22084 OF 2001

ORDER :

This writ petition is filed questioning the order in CMA.No.1 of 1998, dated 26-8-2001 on the file of the Agent to the Government, Khammam in dismissing the appeal filed under A.P. Scheduled Areas Land Transfer Regulation 1 of 1959.

The facts, in brief, may be stated as under :

The writ petitioner is a member of a Scheduled Tribe who purchased an extent of Ac.1-33 guntas situated in Sy.No.122/2 and an extent of Ac.1.39 guntas situated in 122/3 of Brindavanam, h/o. Chunchupalli, Kothagudem Mandal, Khammam District on 10-5-1994 from one Buchaiah who is also a Tribal. It is stated that having purchased the said land, she constructed a hut and residing therein. She also developed the land investing huge amounts by erecting an electric bore-well, pipelines and etc. While so, the 4th respondent made a petition before the 2nd respondent – Special Deputy Collector (Tribal Welfare), Palvoncha alleging that the transfer in favour of the writ petitioner was in contravention of the provisions of the Regulation 1 of 1959. It was pleaded in the said application that the fourth respondent was the grandson of one Malothu Lakshman who was the original pattedar of the land in Sy.No.122/2 and on 22-3-1968 the said land was sold in favour of one Maddiboina Mallaiah who was a non-tribal. In turn, the said Mallaiah sold the land in question to one Buchaiah on 6-4-1990. It is not in dispute that the said Buchaiah is a tribal from whom the petitioner purchased the land in question on 10-5-1994. The fourth respondent filed a petition for eviction before the Special Deputy Collector in the year 1988, during which time Maddiboina Mallaiah was in possession of the land in question. Having called for a report from the Special Revenue Inspector, Palvoncha, the 2nd respondent by order dated 22-6-1991 held that the sale in favour of Mallaiah was in contravention of the provisions of the Regulation 1 of 1959 and accordingly ordered restoration of the land to the 4th respondent. It is a matter of record that the said Mallaiah did not participate in the proceedings before the 2nd respondent, since by that time he had already parted with the land in question in pursuance of the sale in favour of Buchaiah. Admittedly, the petitioner was not a party to the said proceedings. He came to know about the said order only in the year 1997 and immediately filed an Appeal being CMA.No.1 of 1998 before the 1st respondent – The Agent to the Government. By order dated 26-8-2001 the said Appeal was dismissed confirming the order of the 2nd respondent dated 26-2-1991 observing as under :

> *"The Non-Tribe wisely anticipating that he will never succeed in the Court against the provisions of LTR has sold away the disputed land*

Ac.1.33 in Sy.No.122/2 to a Scheduled Tribe candidate by deceiving the innocent and illiterate in the 2nd transaction i.e., on 6-4-1990, knowingly that the judgment was not yet delivered in LTR Case No.982/88/KGM. Knowingly this was done with malicious intention to recover his money the respondent has cheated and thereby committed an offence comes under Section 420 and liable for prosecution. By all means it is crystal clear that Maddeboina Mallaiah Respondent in LTR Case No.982/88/KGM has no valid possession over the disputed land during the crucial period i.e., 1969-70, 1970-71 and he came in to possession only after 3-2-70."

Aggrieved by the said order, this writ petition is filed.

I have heard the learned Counsel for the petitioner and the learned Government Pleader for the respondents 1 to 3, and perused the material on record.

At the outset, it is to be noted that as of today the land in question is in possession of the writ petitioner, who is admittedly a tribal, who has purchased the same for a valuable consideration from Buchaiah who is also admittedly a tribal. It is also evident from the record that the vendor of the petitioner Buchaiah purchased the said land during the pendency of the eviction proceedings before the 2nd respondent under Regulation 1 of 1959. By the date of the order of eviction passed by the 2nd respondent dated 26-2-1991, though the land was admittedly in possession of Buchaiah, a tribal, the said fact was not brought to the notice of the 2nd respondent since Buchaiah was not made a party to the said proceedings and the vendor of Buchaiah did not participate in the proceedings. It is no doubt true that the initial transfer of the land from the grandfather of the 4th respondent in favour of Mallaiah, a non-tribal, was in contravention of Regulation 1 of 1959. However, during the pendency of eviction proceedings itself, the said Mallaiah parted with the possession since the same was sold in favour of a tribal. Thus, the cause of action did not survive as on that date inasmuch as the land was already restored and put in possession of a tribal.

As a matter of fact, in respect of the adjacent land situated in Sy.No.122/3 which was also originally belonged to the grandfather of the 4th respondent and was

sold in favour of Mallaiah, a non-tribal, who in turn sold in favour of Buchaiah, a tribal, similar proceedings were initiated under Regulation 1 of 1959. However having taken note of the fact that pending the eviction proceedings, Mallaiah parted with the possession and the same was put in possession of a tribal, the eviction proceedings were dropped by order dated 3-6-1993 observing that the provisions of Regulation 1 of 1959 do not attract and that there was no reason to interfere with the possession and enjoyment of the land by a tribal.

In the instant case though the 1st respondent – Appellate Authority has taken note of the fact that the land in question as of today is in possession of a tribal, the Appeal was dismissed observing that the transfer was affected by Mallaiah in favour of a tribal by deceiving innocent and illiterate with a malicious intention to recover his money. The said observations, in the absence of any acceptable evidence to substantiate, appear to be unwarranted and unjustified.

It is also relevant to note that the fourth respondent, at whose instance, the proceedings were initiated under Regulation 1 of 1959 for eviction has entered into a compromise with the writ petitioner and both of them filed a joint memo in this Court categorically stating that the petitioner, who is a tribal is in physical possession of the land in question. In the circumstances, viewed from any angle, I am of the opinion that the dispossession of the writ petitioner, who is admittedly a tribal, is not at all warranted. Since as of today, the possession of the writ petitioner cannot be said to be in contravention of the provisions of the Regulation 1 of 1959, there is absolutely no justifiable reason to dispossess the petitioner. Hence, the impugned orders of eviction are liable to be set aside.

Accordingly, the Writ Petition is disposed of setting aside the impugned orders dated 26-8-2001 as well as 25-2-1991 passed by the respondents 1 and 2 respectively. No costs.

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2nd November, 2005.

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